

**BOARD OF ENVIRONMENTAL REVIEW**  
**AGENDA ITEM**  
**EXECUTIVE SUMMARY FOR INITIATION OF RULE AMENDMENTS**

**Agenda #** \_\_\_\_\_

**Agenda Item Summary:** The Department requests that the Board initiate rulemaking to amend the air quality rules to revise the amount of the annual air quality operation fees and the air quality open burning fees.

**List of Affected Rules:** This request to initiate rulemaking would amend ARM 17.8.505, 17.8.510, and 17.8.514.

**Affected Parties Summary:** The proposed amendments to the annual air quality operation fees would affect all facilities in existence as of January 1, 2002, and that either hold an air quality permit or that will be required to obtain an air quality permit pursuant to Title V of the Federal Clean Air Act. The proposed amendments to the open burning fees would affect all of the major open burners in the state (there are 12 in the state at this time): the Bureau of Indian Affairs; the Bureau of Land Management; F.H. Stolze Land & Lumber Company; Louisiana-Pacific Corporation; the Montana Department of Natural Resources & Conservation; the National Park Service; Pyramid Mountain Lumber, Inc.; Plum Creek Timber Company; R-Y Timber, Inc.; the U.S. Fish & Wildlife Service; the U.S. Forest Service; and Wyoming Sawmills, Inc.

**Scope of Proposed Proceeding:** The Department requests that the Board initiate rulemaking and conduct a public hearing to consider the proposed amendments.

**Background:** Pursuant to §75-2-220, MCA, the Department assesses air quality permit application fees, annual air quality operation fees, and major open burning permit fees. In the aggregate, these fees must be sufficient to cover the Department's costs of developing and administering the permitting requirements of the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the Board.

Annual air quality operation fees are required for all facilities that hold an air quality permit or that will be required to obtain an air quality permit pursuant to the Title V operating permit program. The air quality operation fee assessed under ARM 17.8.505 is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and includes an administrative fee plus a per ton fee for tons of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted. The amount of money the Department needs to generate through air quality operation fees depends on the legislative appropriation and the amount of carryover from the previous year. The emission component of the operation fee is also revised to account for changes in the total amount of pollutants emitted in the state. This rulemaking would set the air quality operation fees for 2002 by revising the per ton charge from \$16.93 to \$17.89.

The Department is proposing that the Board also revise the numbering of ARM 17.8.505 to conform to the current numbering style of the Montana Secretary of State's Office. Because the tiered system of fees for various regulated pollutants was replaced with a uniform fee

system in 1998, the Department proposes that the Board eliminate the reference to the tier system in 17.8.510.

The Department received a letter from Carlton D. Grimm, Ph.D., Executive Consultant, PPL Montana, suggesting five alternative proposals pertaining to the air quality fees he would like the Board to consider.

The Department proposes that the Board amend ARM 17.8.514 by revising the fee required for major open burning permit applications. Each year, in consultation with the Montana Airshed Group, the Department develops a budget reflecting the cost the Department will incur that year in operating its Smoke Management Program for major open burners. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions during the previous year in which the burner conducted open burning pursuant to an air quality major open burning permit. 7691.4 tons of emissions were reported for last year, compared to 6562.1 tons for 2000, or an increase of 1129.3 tons.

The budget for operating the program for 12 major open burners in fiscal year 2003 is \$44,723.00, compared to a budget of \$43,885.97 in fiscal year 2002. The \$837.00 budget increase is due to expected increases of \$1,547.60 for personnel services, \$2,986.32 for contracted meteorological services, and \$155.00 for miscellaneous expenses, and expected decreases of \$2,000.00 for supplies and materials, \$135.00 for travel, and \$1,716.89 for indirect costs. The Department proposes that the Board decrease the permit fees from \$15.84 per ton of particulate, \$3.96 per ton of oxides of nitrogen, and \$3.96 per ton of volatile organic compounds emitted to \$13.32, \$3.33, and \$3.33, respectively.

**Hearing Information:** The Department recommends that the Board appoint a hearing officer and conduct a public hearing to take comment on the proposed amendments.

**Board Options:** The Board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment;
2. Modify the Notice and initiate rulemaking; or
3. Determine that amendment of the rules is not appropriate and deny the Department's request to initiate rulemaking.

**DEQ Recommendation:** The Department recommends that the Board initiate rulemaking, appoint a hearing officer, and conduct a public hearing as described in the proposed Montana Administrative Register (MAR) notice attached to this executive summary.

**Enclosure:** The following information is attached to this summary:

Draft Notice of Public Hearing on Proposed Amendment.  
Letter from Carlton D. Grimm, Ph.D., Executive Consultant, PPL Montana